MICHIGAN SUPREME COURT
Michigan Hall of Justice, 925 West Ottawa, P. O. Box 30052, Lansing, MI 48909

ON APPEAL FROM

COURT OF APPEALS
Hall of Justice, 925 West Ottawa, P. O. Box 30022, Lansing, MI 48909-7522

KENNETH J. SPEICHER, an individual,

Plaintiff/Appellee,

v

COLUMBIA TOWNSHIP BOARD OF TRUSTEES and COLUMBIA TOWNSHIP PLANNING COMMISSION,

Defendants/Appellants.

SUPREME COURT NO. _____

Court of Appeals No. 306684

Lower Court: Van Buren County Circuit Case No. 11-60-857-CZ

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PLAINTIFF/APPELLEE KENNETH J. SPEICHER'S BRIEF IN OPPOSITION TO DEFENDANTS/APPELLANTS APPLICATION FOR LEAVE TO APPEAL

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STATEMENT RESPONDING TO DEFENDANTS' STATEMENT IDENTIFYING REQUESTED RELIEF

Plaintiff/Appellee Kenneth J. Speicher (Speicher) filed suit against the Columbia Township Board of Trustees and the Columbia Township Planning Commission (collectively referred to as the Township) on or about March 11, 2011. The complaint alleged several violations of the Michigan Open Meetings Act (OMA) MCL 15.261 et seq.

On January 22, 2013 the Court of Appeals agreed that the Township had violated the OMA. However, unlike every other reported case (with several distinguishable exceptions which will be addressed later) Speicher was denied his claim for actual attorney fees under MCL 15.271(4) (**Exhibit 1**).

Speicher then filed a motion for reconsideration of his claim for actual attorney fees. The Court of Appeals relented on December 19, 2013 (**Exhibit 2**) recognizing its duty to follow well-established precedent and remanded this case to the trial court to award Speicher his costs and actual attorney fees.

In its opinion after reconsideration, the Court of Appeals panel requested the convening of a special panel under MCR 7.215(J)(3) to consider established precedent. A poll of court of appeal judges was taken pursuant to MCR 7.215(J)(3)(a) and a majority of judges rejected the request for a conflicts panel (**Exhibit 3**).

While the question of when costs and attorney fees should be awarded to an OMA plaintiff is certainly significant to the litigants, the OMA is a little used statute yielding only 27 reported cases since its enactment in 1976. Contrary to the assertions of the Township, the line of decisions is hardly "muddled." In fact each of those decisions referenced in the Township's brief (p. v) is fairly consistent as will be explained later in this brief.

As will be seen later the Township mischaracterizes the line of opinions referred to in its brief. The only decision clearly parting from well-established precedent is the one presently before this Court.

Speicher would urge this Court to reject this application for leave to appeal. The established case law that the Township seeks to overturn is well-reasoned and logical. Moreover, it is required by a clear reading of the statute and furthers the purpose of the Legislature in enacting it. This Court should reject the Township's urgent request to engage itself in the legislative process by discouraging, rather than encouraging, as the legislation was intended to do, a citizen from calling out its government when its government violates the law.

STATEMENT OF QUESTIONS INVOLVED

1. Did the Michigan Legislature intend and does the OMA require that a plaintiff seeking injunctive relief under MCL 15.271(4) be entitled to recoup actual attorney fees and costs when awarded declaratory relief?

Plaintiff/Appellee Kenneth J. Speicher says Yes.

Defendants/Appellants Columbia Township say No.

The Court of Appeals said Yes because it is compelled to do so by MCR 7.215(J)(3) but the Court of Appeals disagreed with well-established precedent and asked for a conflicts panel. That request was refused by a majority of the Court of Appeals judges.

1.0 STATEMENT OF FACTS

The Columbia Township Board of Trustees (Board) and the Columbia Township Planning Commission (Commission) (collectively the Township) violated the Michigan Open Meetings Act (OMA) MCL 15.261 et seq. The Board is the governing body of Columbia Township. The Commission is a lesser body with certain defined duties. The Board consists of five (5) members. The Commission consists of three (3). The Board and Commission have one (1) member in common.

On March 16, 2010 the Board voted unanimously (**Exhibit 4**) to pass Resolution 2010-08 which established dates for regular monthly meetings for both the Board and the Commission for the following fiscal year commencing April of 2010 (**Exhibit 5**).

On October 18, 2010 at a regular meeting of the Commission, the Commission recommended to the Board that the Commission have regular quarterly meetings (as opposed to monthly meetings) beginning January 17, 2011 (**Exhibit 5**). However, the Board never acted on the recommendation of the Commission and there was no notice published after the October 18th meeting (as required by the OMA) notifying the public of a change in the regular meeting schedule. This is not disputed (**Exhibit 6**).

Speicher needed to address the Commission with concerns about a tavern abutting his lake rental property closing off two access points to the tavern's parking lot which was making his rental property less attractive (**Exhibit 7**). Speicher believed that those access points could only be closed with the approval of the Commission (*Id*, ¶ 14). Speicher wanted to bring that complaint to the Commission at its next regularly scheduled meeting on February 14, 2011 (*Id*, ¶ 14B).

Speicher had several other issues he wanted to address at the February 14th regularly scheduled meeting of the Commission (**Exhibit 7, ¶ 14**). For instance, Speicher wanted to address the arbitrary and capricious nature of a zoning ordinance which permits only one accessory building

limited in size to not greater than 32 x 40 feet in an R2 District (where Speicher lives) regardless of the size of the lot (Speicher has 40 acres). Whereas in an RO District (which permits much smaller lots than are permitted under R2) the number of accessory buildings is virtually unlimited. Speicher hoped that by bringing this to the attention of the Commission that he could convince them that changes need to be made in the zoning ordinance (*Id.*, ¶ 14A).

Speicher had attended the January regular meeting of the Commission where the zoning consultant told the Commission that the zoning administrator (who attends every Commission meeting) did not have the authority to enforce Township zoning ordinances. Speicher knew that to be incorrect, but he did not have the zoning ordinance in front of him at the meeting and could not bring it to the attention of the Commission. After that meeting he reviewed the ordinance and determined that the ordinance specifically authorizes the zoning administrator to enforce Township zoning ordinances (**Exhibit 7, ¶ 14C**).

Speicher also wanted to bring to the attention of the Commission and the zoning administrator that the tavern abutting his lake rental property had become a public nuisance. There had been gun shots fired and fights in the parking lot. Loud music and frequently loud cursing could be heard late at night and early in the morning by nearby residents. The tavern is in a residential neighborhood, but has a grandfathered use. Cutting off the two access points to its parking lot forced tavern traffic to pass by Speicher's rental cottage most every night during the prime rental season from 10:00 p.m. to 2:30 a.m. accompanied by vehicle noise and lights. Speicher believed there to be several violations of Township zoning ordinances and wished to bring this to the attention of the Commission and the Administrator. Speicher also wished to inform the Administrator that she was empowered to enforce the zoning ordinance and point out to her the difficulty of doing that when she resides in Illinois (**Exhibit 7, ¶ 14B and C**).

In addition to Speicher Township resident Dixie Kovach (Kovach) also appeared for the February 14th meeting of the Commission. Kovach intended to point out the zoning violations of the tavern because she also has lake rental property and it is located right next to the tavern (**Exhibit 8, ¶ 18**).

On February 14, 2011 the regularly scheduled meeting of the Commission was not held (**Exhibit 8, ¶ 16**). The same thing occurred on March 14 which was the next regularly scheduled meeting of the Commission. Again, both Speicher and Kovach were prevented from addressing their issues with the Commission and the Zoning Administrator on March 14 (**Exhibit 7, ¶¶ 15 and 16** and **Exhibit 8, ¶ 10**).

Speicher claimed in his complaint that the Commission did not vote to change the regular meeting dates from monthly to quarterly. And, therefore, the change itself was a violation of the OMA. The video referenced by the Township's brief in support of application for leave showed the motion to change to quarterly meetings being made, however, it does not conclusively show that particular motion being passed. The trial court believed that it had. That decision was appealed and affirmed by the Court of Appeals. Speicher did not request reconsideration on that issue.

The trial court did not directly answer Speicher's contention that the Commission violated MCL 15.265 when it failed to post notice of the cancellation of the February and March meetings within three (3) days after the meeting at which the cancellation was decided upon. The trial court simply said that any such violation was a "technical violation" and "not actionable." Speicher's supplemental affidavit in support of reply brief (**Exhibit 9**) provided a more detailed explanation of the concerns that he wished to address at the cancelled February and March meetings of the Commission. He also testified in his affidavit that as of February 11, 2011 at approximately 2:00 a.m. (Speicher works nights) the Commission meeting notice for February 14th and March 14th was still posted at the Township hall.

The Township argued that the clerk notified the South Haven Tribune to publish the new meeting schedule and produced an email from the clerk to the South Haven Tribune. However, Speicher testified that he examined each of the past issues of the South Haven Tribune at the public library between the October Commission meeting and the April Commission meeting and found no such notice published in the South Haven Tribune. Accordingly, the Court of Appeals had no trouble determining that the Township violated MCL 15.265(3) requiring that a change in the regular meeting schedule of a public body be posted within three (3) days after the meeting at which the change is made.

In his complaint, Speicher did not seek to invalidate a decision of the Board or Commission under MCL 15.270. The damage had been done and invalidation under MCL 15.270 was simply not available. Accordingly, Speicher proceeded solely under MCL 15.271 seeking declaratory and injunctive relief. In granting the Township's motion for summary disposition the trial court said in part:

> ...[I] don't find this to be a violation. I think it's technical in nature. I think there was a full faith attempt by the Township to post what they had to. The fact that they have decided that they have fewer meetings, I just don't think it is actionable at least on these facts so the motion is denied. (**Exhibit 10, p. 22**)

What the trial court seemed to be saying was that if the Township violated the OMA, it was only a "technical violation" and Speicher was entitled to no relief. As we shall see there is no separate classification in the OMA under MCL 15.271 which would permit a trial court to distinguish between technical violations and actionable violations. The statutory language simply does not admit of such judicial discretion.

The trial court also sought an explanation from Speicher as to how the violations affected him (**Exhibit 10, p. 9**). As is apparent in the transcript and the exchanges between counsel and court, and ultimately the decision of the trial court, the trial court did not like Plaintiff's answers and

ultimately concluded that Speicher's case was much ado about nothing and granted the Township's motion for summary disposition.

Speicher then filed a motion for reconsideration and the trial court denied it stating in part:

> ...While the amendments to the Planning Commission meeting schedule may have been in violation of the Open Meetings Act, the court is not inclined to overturn its earlier finding that the violations, if any, were technical in nature and did not impair the rights of the public in having their government bodies make decisions in an open meeting... Plaintiff may have been inconvenienced in going to the Township Hall for a meeting that was not held, but the court is of the opinion that the conduct of the Defendants is not actionable under the Open Meetings Act. Plaintiff had the option of bringing his concerns to the Planning Commission at its next regularly scheduled meeting... (**Exhibit 11, p. 2**).

In this statement, the trial court revealed its confusion between MCL 15.270 and MCL 15.271. MCL 15.270(2) permits the trial court to invalidate the decision of a public body only if the violation has impaired the rights of the public. That section further stresses that failure to give notice under MCL 15.265 must interfere with substantial compliance of MCL 15.263 in order to impair the rights of the public. Only in such case may the trial court invalidate the decision of a public body. Whereas MCL 15.271 has no such limitation.

MCL 15.271(4) only requires a showing that a public body "is not complying with this act" in order to give the trial court authority to "compel compliance or to enjoin further noncompliance" with the OMA. There is nothing in this admonition which permits an interpretation that there are two, or more, levels of OMA violations with no available remedy for a "technical violation."

Plaintiff appealed the decision of the trial court to the Court of Appeals. The Court of Appeals agreed with Speicher that the Township had violated the OMA by failing to timely post the changes in the schedule of regular meetings under MCL 15.265. However, it too confused MCL15.270 and MCL 15.271 when it determined that the failure to comply with MCL 15.265 was a mere "technical violation" of the OMA while there was no evidence that it was wilful and there was

no evidence of harm to the public (**Exhibit 1**). The Court of Appeals also demonstrated its antipathy for Speicher's claimed "injuries" and held that such "injuries" were not caused by the OMA violations so no injunctive relief was warranted. It denied Speicher's actual attorney fees due to the "technical nature of this OMA violation." (*d.*)

In granting Speicher's motion for reconsideration the Court of Appeals issued a second opinion for publication (**Exhibit 2**) holding that it was constrained by long-established precedent to hold that Speicher was entitled to actual attorney fees under MCL 15.271 because he had demonstrated a violation of the OMA. The Court of Appeals further noted its disagreement with established precedent by recommending a conflict panel under MCR 7.215(J)(3). However, the majority of the Court of Appeals judges disagreed (**Exhibit 3**).

2.0 LAW AND ARGUMENT

2.1 Standard of Review

This case involves a question of law, i.e., the proper interpretation of the OMA. Statutory interpretation is an issue of law that is reviewed *de novo*. In *G.C. Timmis & Co. v Guardian Alarm Co.*, 468 Mich 416, 419; 662 NW 2d 710 (2003) this Court explained:

> When construing a statute, the Court's primary obligation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute. *Chandler v Co. of Muskegon* 467 Mich 315, 319; 652 NW 2d 224 (2002). If the language of the statute is unambiguous, the Legislature is presumed to have intended the meaning expressed. *Tryc v Michigan Veterans Facility*, 451 Mich 129, 135; 545 NW 2d 642 (1996). *(Id.* p. 420*).*

In *People v Watkins*, 491 Mich 450, 467, 468, 818 NW 2d 296 (2012) this Court noted that if the statutory language is plain and unambiguous the courts must enforce the statute as written and follow its plain meaning, giving effect to the words used by the Legislature and the Court is to read statutory provisions as a whole, focusing on not only the individual words and phrases, but also placement of those words and phrases in the context of the broader legislative scheme.

A bedrock principle of statutory construction is that "a clear and unambiguous statute leaves no room for judicial construction or interpretation" and when "the statutory language is unambiguous, the proper role of the judiciary is to simply apply the terms of the statute to the facts of a particular case." And "words used by the Legislature must be given their common ordinary meaning" (citations omitted). See *Rakestraw v Gen Dynamics & Sys.*, 469 Mich 220, 224; 666 NW 2d 199 (2003).

2.2 Using the Appropriate Rules of Statutory Construction Michigan Appellate Courts Have Overwhelmingly Concluded That Under MCL 15.271 an OMA Plaintiff Proving a Violation of the OMA is Entitled to Actual Attorney Fees.

The Township contends that "the decisions by the lower court present a hopeless muddle of confused precedent" (Township's Brief at p. 14). The Township criticizes this line of cases for reaching the conclusion that under MCL 15.271(4) if the plaintiff establishes an OMA violation he or she is entitled to costs and actual attorney fees claiming these cases have been relied upon "without analysis."

MCL 15.271(4) reads as follows:

> If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act, and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

Cases cited by the Court of Appeals on reconsideration as the line of cases it acknowledged a duty to follow were: *Craig v Detroit Public Schools Chief Executive Officer*, 265 Mich 572; 697 NW 2d 529; *Herald Co., Inc. v Tax Tribunal*, 258 Mich 78; 669 NW 2d 862 (2003); *Morrison v City of East Lansing*, 255 Mich App 505; 660 NW 2d 395 (2003); *Nicholas v Meridian Charter Twp. Bd.*, 239 Mich App 525; 609 NW 2d 574 (2000); *Manning v East Tawas*, 234 Mich App 244, 593 NW 2d 649 (2000); *Schmiedicke v Clare Sch Bd,* 228 Mich App 259; 577 NW 2d 706 (1998). The reconsideration panel indicated that all of these cases were wrongly decided because MCL 15.270, MCL 15.271 and MCL 15.273 do not refer to the other sections. Of course they don't. They provide completely different remedies and require completely different proofs.

The reconsideration panel reads a new word into MCL 15.271(4). The panel would have Section 11 read "and succeeds in obtaining **injunctive** relief in the action." The Legislature could also have completely left out the words "in obtaining relief in the action" leading to the same result. However, the Legislature did neither. It simply required "relief in the action." The Township

does not dispute that declaratory relief is, in fact, relief. The line of cases referred to by the reconsideration panel simply applied the clear language of the statute.

The cases referenced in the Township's application for leave to appeal which "muddled" the reasoning in the line of cases referenced by the reconsideration panel are *Leemreis v Sherman Twp*, 273 Mich App 691, 707-709; 731 NW 2d 787 (2007); *Felice v Cheboygan County Zoning Commission*, 103 Mich App 742; 304 NW 2d 1 (1981); and an unreported case attached to the Township's application cited as *Saline Area Schools v Mullins*, 2007 WL 1263974 at 1 (Docket No. 272558, Mich App 2007). In *Leemreis, supra,* attorney fees were never available to plaintiff because, as the court noted:

> ...The Leemreis' did not ask for injunctive or declaratory relief; they only sought invalidation, which they did not receive.... *Id.*, p. 709.

In *Felice, supra,* the plaintiffs withdrew their claim for injunctive relief by stipulation prior to a hearing and the invalidation claim had been mooted by re-enactment. The claim for attorney fees hinged on the *Felice* plaintiff's claim for injunctive relief under MCL 15.271(4) which had been dismissed. So there was no issue properly before the court upon which attorney fees could have been granted.

The *Mullins* case attached to the Township's application for leave to appeal is clearly distinguishable upon its facts. A member of the school board asked the counter-plaintiff not to video tape a school board meeting. Less than a month later the school board acknowledged that the OMA requires the school board to permit the public to record a meeting. Three months later the counter-plaintiff filed a counter-claim seeking injunctive relief. The court noted that counter-plaintiffs "did not seek relief under the OMA to compel compliance because the plaintiff had complied well before defendants commenced the action..." (Township's Application for Leave to Appeal, p. 1). Arguably there was no violation of the OMA in that case. Since only one member

of the school board "asked" the counter-plaintiff not to videotape the meeting, it was not a decision of a public body so *Mullins* could not establish the first prerequisite of MCL 15.271(4) , i.e., that a body public "is not complying with this act."

2.3 The Denomination of an OMA Violation as a "Technical Violation" Is a Judicial Distinction Not Authorized by MCL 15.271.

The OMA specifically permits any person to commence a civil action under MCL 15.271(1). That statute does not define the term "person." Seemingly any adult mentally competent individual may file a claim. The person does not require a motive in order to file an OMA claim. A person need not claim an injury under this section of the OMA. The only thing it requires is that the person demonstrate that a public body "is not complying with this act" in order to seek relief for a violation. Under MCL 15.271(4) if a person demonstrates that the public body is not complying with the OMA and "succeeds in obtaining relief in the action," the person "shall recover court costs and actual attorney fees for the action." Clearly an OMA plaintiff need only prove a violation of the OMA and obtain relief in order to be entitled to costs and actual attorney fees. However, the relief available is hardly onerous on the public body. It merely permits the trial court to order the public body to comply with the law, or to enjoin the public body from violating the OMA, things the public body is already required to do.

MCL 15.270, by contrast, imposes significant limitations on the proofs required for the relief available under that section. MCL 15.270(1) gives the public body the benefit of a presumption that its decisions comply with the OMA. It also permits "any person" to commence a civil action to invalidate a decision of a public body that violates the OMA.

MCL 15.270 further limits the court's ability to invalidate a decision by a public body by requiring under MCL 15.270(2) that if the alleged violation was under section 5 of the OMA (the technical notice, publication and posting requirements) the OMA plaintiff must be able to show that the violation of those posting requirements "interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public." Moreover, in further limitation the OMA plaintiff must file his or her complaint within 60 days of the approved minutes being made available to the public. Finally, under MCL 15.270(5) if the

public body reenacts its decision in a meeting open to the public the court cannot invalidate that decision

The concept of substantial compliance and a technical violation first arose under *Arnold Transit Co. v Mackinac Island*, 99 Mich App 266; 287 NW 2d 904 (1980). That case was brought only under MCL 15.270 and the court ruled that there was substantial compliance with the notice provisions of Section 5. The substantial compliance language of the OMA does not apply to MCL 15.271(4) because each section stands on its own. The same is true of a "technical violation." There is nothing in the language of MCL 15.271(4) which suggests that "mere technical violations" do not justify injunctive relief. All that is required is a finding that the public body is not complying with the OMA The technical violation concept is a judicial gloss with no basis in the statute.

In enacting the OMA, the Legislature gave every person the right to file a lawsuit under the OMA. It did not impose upon a person the requirement that the person must have proper motive, intent or suffer damages in order to obtain relief. On the other hand, the Legislature provided no incentive for a person to file a law suit. Unless a successful OMA plaintiff can recoup his costs and actual attorney fees no individual with limited resources would want to risk filing suit.

Since the OMA gives one no incentive to incur the expense of litigation by filing a claim for injunctive relief it is only human nature for a judge, or panel of judges, to speculate as to the plaintiff's reason for filing an OMA claim. However, such speculation must remain speculation because the plaintiff's motive is not relevant to an OMA claim. And it is unfair to the OMA plaintiff who may have very admirable reasons for taking such risk in order to hold his government accountable.

It is also reasonable to conclude, based on the dearth of injunctions granted under the OMA that trial courts are not particularly receptive to enjoining government institutions even if it simply requires compliance with the law. Only in *Booth Newspapers, Inc. v Wyoming City*

Counsel 168 Mich App 459; 425 NW 2d 695 (1988) was an injunction granted in a reported case. There is no reported case where a plaintiff individual (as opposed to a news organization) actually obtained injunctive relief. Knowing this, if this Court were to determine that one must obtain injunctive relief, no matter how egregious the OMA violation, in order to be reimbursed actual attorney fees, with those odds, this Court would immediately establish a disincentive for any citizen to file suit under the OMA.

The reconsideration panel in Speicher decried that "existing case law has morphed from the initial *Ridenour v Dearborn Bd of Ed*, 111 Mich App 798; 314 NW 2d (1981) opinion." The reconsideration panel noted that in *Ridenour* the trial court stated that it would have granted an injunction if the defendant's counsel had not promised that defendant would refrain from further OMA violations. That promise was deemed to be the equivalent of an injunction.

In *Davis v Wayne County Airport Authority*, 2013 Mich App LEXIS 703 (2013) (**Exhibit 12**) that panel of the Court of Appeals added its voice to the long line of reported cases decried by the reconsideration panel and the Township. Distinguishing *Leemreis, supra*, as does Speicher, the court noted that "neither proof of injury or issuance of an injunction is a prerequisite for the recovery of attorney fees under the OMA." (*Id.*, p.2). And the fact that the "trial court determines that an injunction is unnecessary does not affect the analysis under MCL 15.271(4)" because when a court recognizes a violation of the OMA that constitutes declaratory relief which is all that is necessary to justify an award of attorney fees and costs. A poll of all of the judges on the Court of Appeals resulted in denial of the reconsideration panel's request for a conflict panel.

The appellate courts and judges that have considered the issue that the Township wishes to bring before this Court have overwhelmingly concluded that declaratory relief is relief under MCL 15.271(4) that when granted, requires a successful OMA litigant to be reimbursed costs and actual attorney fees.

2.4 The Township's Attempt to Re-Write MCL 15.271(4) Must Fail.

There was no dispute that the commission was a public body under the OMA. There was no dispute that Speicher commenced a civil action against the commission for injunctive relief, to compel compliance and enjoin further non-compliance, the sole question is whether Speicher succeeded in obtaining relief in the action. If so he is entitled to actual attorney fees and costs. The Court of Appeals acknowledged that Speicher had proven a violation of the OMA. By definition that is declaratory relief. See MCR 2.605. In order for this Court to determine that Speicher is not entitled to actual attorney fees and costs under MCL 15.271(4) it is necessary to do one of four things: Insert the word "injunctive" before the word "relief" into the statutory language; determine that declaratory relief is not relief under the statute; insert the word "successful" before the words "a civil action;" or delete the words "in obtaining relief in the action." To do any one of these things would be judicial legislating.

If this Court determines that "relief" is ambiguous within the context of MCL 15.271(4) because it may mean either any relief, or only injunctive relief, then this Court should use the "lodestar of statutory construction" which is to look at "legislative purpose or intent," and to "give effect to the interpretation that more faithfully advances the Legislative purposes behind the statute." See e.g., *People v Adair*, 452 Mich 473, 479-480; 550 NW 2d 505 (1996).

In *Booth Newspapers v University of Michigan Bd. of Regents*, 444 Mich 211, 222-223; 507 NW 2d 422 (1993) the Legislative purpose of the OMA was described as follows:

> ...the OMA's legislative purposes were to remedy the ineffectiveness of the 1968 statute and to promote a new era in governmental accountability. Legislators hailed the act as "a major step forward in opening the political process to public scrutiny." 1976 Journal of the House 2242 (June 24, 1976 remarks of representative R Wolpe). During this period, lawmakers perceived openness in government as a means of promoting responsible decision making. Moreover, it also provided a way to educate the general public about policy decisions and issues. It fostered belief in the efficacy of the system. Legal commentators noted that "open government is believed to serve as both a light and disinfectant in exposing a potential abuse and misuse of power. The deliberation

> of public policy in the public forum is an important check and balance on self-government. The pro-disclosure nature of the OMA prompted one of its sponsors to describe the law, prior to enactment, as "a strong bill now which provides very limited closed meetings" and "very tight, limited exceptions...." See 1976 Journal of the House 2242 (June 24, 1976 remarks of Representative Hollister), to further the OMA's legislative purposes, the court of appeals has historically interpreted the statute broadly, while strictly construing its exemptions and imposing on public bodies the burden of proving that an exemption exists."

When enacting the OMA the Legislature must have considered that enforcing it would not be a priority for prosecuting attorneys. So it also provided for citizen suits. Judicial notice may be taken that litigation is expensive. The OMA provides no incentive for a citizen suit except the possibility of invalidating a decision that the citizen disagrees with. The limitations under MCL 15.270 are significant and allow the public body to reenact decisions without penalty. Moreover, there is no provision in MCL 15.270 for an award of attorney fees. Consequently, that section provides no incentive for a citizen to enforce the OMA without a monetary interest in undoing an act of a public body. In fact, the lack of ability to at least be able to recoup attorney fees and costs is a disincentive.

Holding that declaratory relief is relief under MCL 15.271(4) furthers the purpose of the OMA as set forth above to require a public body to at least compensate the plaintiff who can demonstrate a violation of the OMA by requiring the public body to reimburse the plaintiff for his or her costs and actual attorney fees. Otherwise, MCL 15.271(4) is virtually toothless if, as in *Ridenour v Bd of Education of the City of Dearborn School District*, 111 Mich App 798; 314 NW 2d 760 (1982), a promise by a public body's attorney not to violate the OMA in the future can be sufficient to avoid the imposition of an injunction. That courts are extremely reluctant to enjoin a public body is demonstrated by the fact that Speicher could only find one reported case where an injunction was granted in the trial court and survived an appeal. Perhaps the best example of how reluctant the courts are to grant injunctive relief is stated in *Cuson v Tallmadge Charter Twp. & Land Acquisition*, 2003 Mich App LEXIS 1133 (**Exhibit 13**).

3.0 RELIEF REQUESTED

Plaintiff/Appellee Kenneth J. Speicher requests this Court deny Appellants Columbia Township Board of Trustee's and Columbia Township Planning Commission's application for leave to appeal and grant Plaintiff/Appellee his costs and actual attorney fees incurred.

Dated: February 20, 2014

SILVERMAN, SMITH & CHALMERS, P.C.

Robert W. Smith (P31192)
Attorney for Plaintiff/Appellee

PROOF OF SERVICE

I served by first class mail, postage pre-paid, on the 20th day of February, 2014, a copy of the foregoing instrument upon all interested parties and counsel of record.

Nancy M. Black